

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

APR 01 2011

Form To Be Used By A Prisoner in Filing a Complaint
Under the Civil Rights Act, 42 U.S.C. § 1983

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY (2) DEPUTY CLERK

Robert J. Montez # 11-06632
Plaintiff's name and ID Number

3614 Bill Price Rd
TRAVIS County Correctional Complex Del Valle, TX 78617
Place of Confinement

A11CA 266LY
CASE NO.

(Clerk will assign the number)

* GREG HAMILTON, Travis County Sheriff,

P.O. Box 1748, AUSTIN, TX. 78767

Defendant's name and address

* JAMES N. SYLVESTER, Chief Deputy,

P.O. Box 1748, AUSTIN, TX. 78767

Defendant's name and address

* TRAVIS COUNTY JAIL Intake Nurse (Name unknown)

500 West 10th Street AUSTIN, TX. 78701 (Central Booking)

Defendant's name and address

(DO NOT USE "ET AL.")

* R. Flores #3112, Correction Officer, % TCCC

3614 Bill Price Rd, Del Valle, TX 78617

Defendant's NAME and Address

* R. Brown #4108, Correction Officer, % TCCC

3614 Bill Price Rd, Del Valle, TX. 78617

Defendants NAME and Address

* Medical Director SUMMERS % TCCC - itsb - medical

3614 Bill Price Rd, Del Valle, TX, 78617

DEFENDANTS NAME & Address

TRAVIS COUNTY

314 West 11th St, Suite 300 AUSTIN, TX 78701

DEFENDANTS NAME & Address

INSTRUCTIONS - READ CAREFULLY

NOTICE:

Your complaint is subject to dismissal unless it conforms to these instructions and this form.

1. To start an action you must file an original and one copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten, in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, **DO NOT USE THE REVERSE SIDE OR BACK SIDE OF ANY PAGE.** ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 18, Federal Rules of Civil Procedure. Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and one copy to the Clerk of the United States Court for the appropriate District of Texas in the Division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. The list labeled as "VENUE LIST" is posted in your unit law library. It is a list of the Texas prison units indicating the appropriate District Court, the Division and an address list of the Divisional Clerks.

FILING FEE AND IN FORMA PAUPERIS

1. In order for your complaint to be filed, it must be accompanied by the filing fee of \$350.00.
2. If you do not have the necessary funds to pay the filing fee in full at this time, you may request permission to proceed *in forma pauperis*. In this event you must complete the application to proceed *in forma pauperis* (IFP), setting forth information to establish your inability to prepay the fees and costs or give security therefor. You must also include a current six (6) month history of your Inmate Trust Account. You can acquire the application to proceed IFP and appropriate Inmate Account Certificate from the law library at your prison unit.
3. 28 U.S.C. 1915, as amended by the Prison Litigation Reform Act of 1995 (PLRA), provides, "...if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." Thus, the Court is required to assess and, when funds exist, collect, the entire filing fee or an initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the Court will apply 28 U.S.C. 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from your Inmate Account, until the entire \$350 filing fee has been paid.
4. If you intend to seek *in forma pauperis* status, then do not send your complaint without an Application to Proceed IFP, and the Certificate of Inmate Trust Account. Complete all the essential paperwork before submitting it to the Court.

CHANGE OF ADDRESS

It is your responsibility to inform the Court of any change of address and its effective date. Such notice should be marked "NOTICE TO THE COURT OF CHANGE OF ADDRESS" and shall not include any motion (s) for any other relief. Failure to file a NOTICE TO THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedure.

I. PREVIOUS LAWSUITS:

- A. Have you filed any other lawsuits in state or federal court relating to your imprisonment? X YES NO
- B. If your answer to "A" is "yes," describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)
 1. Approximate date of filing lawsuit: June 2008
 2. Parties to previous lawsuit:

Plaintiff(s) Robert J. Montez ~~et al~~

Defendant(s) Travis County and officer Chris Hotard
 3. Court: (If federal, name the district; if state, name the county.) Western District
 4. Docket Number: ?
 5. Name of judge to whom case was assigned: Judge Yakel
 6. Disposition: (Was the case dismissed, appealed, still pending?)
Case was settled out of court
 7. Approximate date of disposition: October/November 2009

TRAVIS County Correctional Complex
3614 Bill Price Rd

II. PLACE OF PRESENT CONFINEMENT: Del Valle, TX 78617

III. EXHAUSTION OF GRIEVANCE PROCEDURES:

Have you exhausted both steps of the grievance procedure in this institution?

X YES NO

Attach a copy of the Step 2 grievance with the response supplied by the prison system.

IV. PARTIES TO THIS SUIT:

A. Name and address of plaintiff: Robert J. Montez #11-06632

9/6 TCCC 3614 Bill Price Rd., Del Valle, TX. 78617

c/o Brad Nilsen 12430 Metric Blvd #10105, Austin, TX. 78758

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #1: Greg Hamilton, TRAVIS COUNTY Sheriff, TCSO,
P.O. Box 1748, Austin, Texas 78767

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you. Inadequate medical care, Medical Malpractice: Negligence, official oppression, excessive use of unnecessary force. physical injury & bodily harm. mental anguish. careless omission, malicious intent.

Defendant #2: JAMES N. SYLVESTER, Chief Deputy, TCSO,
P.O. Box 1748, Austin, Texas 78767

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you. Inadequate medical care, Medical Malpractice: Negligence, official oppression, excessive use of unnecessary force. physical, injury, bodily harm.

Defendant #3: TRAVIS COUNTY Jail Intake Nurse, TCJ,
500 West 10th Street, Austin, Texas 78701 (Central Booking) mental anguish. careless omission. malicious intent

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you. Inadequate medical care, Medical Malpractice: Negligence, Careless omission, physical injury, bodily harm,

Defendant #4: R. Flores #3112, Corrections Officer, TCSO, TCCC
3614 Bill Price Rd, Del Valle, TX 78617

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

OFFICIAL OPPRESSION, Excessive use of Unnecessary force, physical injury, Bodily harm,
mental anguish, Careless omission

Defendant #5: R. Brown #4108, Corrections Officer, TCSO, TCCC
3614 Bill Price Rd, Del Valle, TX 78617

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

OFFICIAL OPPRESSION, Excessive use of force (Unnecessary), physical injury, Bodily harm,
mental anguish, Careless omission.

Def #6 M. Summers, Medical Director 9/6 TCCC HSB Medical 3614 Bill Price Rd, Del Valle, TX 78617

Def #7 TRAVIS County, 314 West 11th Street, Suite 300, Austin, TX 78701

(See 4A through 4E)

V. STATEMENT OF CLAIM:

(see Attached Continuance pg (4-A-E))

State here in a short and plain statement the facts of your case, that is, what happened, where did it happen, when did it happen, and who was involved. Describe how each defendant is involved. You need not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra pages if necessary, but remember that the complaint must be stated briefly and concisely. IF YOU VIOLATE THIS RULE, THE COURT MAY STRIKE YOUR COMPLAINT.

1) On or About The 10th day of FEBRUARY, 2011 ^{at approx 12:00 a.m.} I was Administered the wrong medication and ~~for an~~ excessive Amount (overdose) of Medication by the TCSO, Central Booking Intake Nurse (NAME still unknown). On or About the 10th day of FEBRUARY, 2011 at or about 10:30 p.m. I was denied critical medications. Furthermore I was denied Mental Health Services specifically - psychotropic, anti-psychotic, and other psych meds by medical staff and suffered Acute ^{Benzos} withdrawals, placed in upper tier housing in (HSB-12-01) at TCC against medical orders (documented) ^{and placed in G.P. Housing w/out meds.}

2) ON or about the 2nd day of March, 2011, I was physically Assaulted by officers R. Flores #3112 & R. Brown #4108 by means of excessive ^{use} of unnecessary use of force. At Approx 7:00am at TCC Bldg 12-D4-103 my cell door was opened ^{by Officer Flores} and officer Flores prompted me to come out of my cell; once out he grabbed my shirt front and tried to swing me

VI. RELIEF: State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

Monetary Compensation,
Punative Compensation for damages & physical injury & emotional distress
mental anguish

VII. GENERAL BACKGROUND INFORMATION:

A. State, in complete form, all names you have ever used or been known by including any and all aliases:

Robert J. Montez, Robert John Montez

B. List all TDCJ-ID identification numbers you have ever been assigned and all other state or federal prison or FBI numbers ever assigned to you, if known to you.

TDCJ-ID # 1485331

VIII. SANCTIONS:

A. Have you been sanctioned by any court as a result of any lawsuit you have filed? YES ☒ NO

B. If your answer is "yes", give the following information for every lawsuit in which sanctions were imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed sanctions (if federal, give the district and division): N/A

2. Case Number: N/A

3. Approximate date sanctions were imposed: N/A

4. Have the sanctions been lifted or otherwise satisfied?

N/A

YES NO

I - ON OR ABOUT THE 10th day of FEBRUARY, 2011 while BEING BOOKED INTO THE TRAVIS COUNTY JAIL AT CENTRAL BOOKING IN FRONT OF THE FINGER PRINTER / IMAGER AND MUG SHOT DESK, THE TCSO INTAKE SCREENING NURSE DID THEN AND THERE, AT ABOUT 12:00 A.M. (C.S.T.) ADMINISTERED TO ME THE INCORRECT PRESCRIBED MEDICATIONS AND/OR IN AN EXCESSIVE AMOUNT, CAUSING SEVERE REACTIONS, SIDE EFFECTS, PAINS AND SUFFERINGS including BUT NOT LIMITED TO THE FOLLOWING; DIARRHEA, DIZZINESS, DROWSINESS, HEADACHES, LOSS OF APPETITE, STOMACH PAINS, MOUTH SORES, MUSCLE ACHES, NAUSEA, UPSET STOMACH, FATIGUE, TROUBLE SLEEPING, HALLUCINATIONS, SKIN RASH, DEMENTIA, AGGITATION, AGGRESSION, ANXIETY, DEPRESSION, SUICIDAL THOUGHTS, DELUSIONS, CONFUSION, WEAKNESS, MENTAL AND MOOD DISORDERS.

II - ON OR ABOUT THE 10th DAY OF FEBRUARY, 2011, while HOUSED AT TCJ IN P2-215 AT OR ABOUT 10:30 p.m. (C.S.T.),

I ASKED THE POST OFFICER ON DUTY TO SPEAK TO THE NURSE AND ASKED FOR MY MEDICATIONS AS PRESCRIBED BY MY LICENSED AND CERTIFIED MEDICAL DOCTOR FOR MY CHRONIC DIAGNOSIS AND WAS DENIED CRITICAL LIFE SUSTAINING PRESCRIBED MEDICATIONS AND MEDICAL ATTENTION. I SUFFERED CONTINUOUS SEVERE SIDE EFFECTS, ACUTE WITHDRAWS FROM PSYCHOTROPIC MEDICATIONS, and subjected / EXPOSED to the potential of VIRUS to become LESS SENSITIVE TO MY PRESCRIBED AND OTHER MEDICATIONS. PER DOCTORS ORDERS, PHARMACISTS, & MANUFACTURER WARNINGS, I AM NOT TO SUDDENLY STOP TAKING MY MEDICATIONS AS PRESCRIBED DUE TO SUFFERING SEVERE SIDE EFFECTS AND DEVELOPING A RESISTANCE TO DRUG THERAPIES.

II - ON OR ABOUT THE 12th DAY OF FEBRUARY, 2011 I WAS TRANSFERRED FROM TCJ P2-215 AND PLACED IN A DANGEROUS LIVING CONDITION AGAINST MEDICAL DIRECTIVES FOR LOWER TIER HOUSING AND HOUSED ON UPPER TIER AT TCC - HSB-12-01. I WAS EXPOSED TO CLIMBING METAL STAIRWAYS AGAINST DOCUMENT MEDICAL ORDERS, DUE TO SEVERE & ACUTE WITHDRAWS, potential SEIZURE RISKS,

(4-B)

AND OTHER MEDICALLY DOCUMENTED SAFETY CONCERNS.

THEN ON FEBRUARY 24th, 2011 I WAS PLACED IN
GENERAL POPULATION Housing without Doctor's Clearance & Consent.

IV - FROM ABOUT FEBRUARY 10th, 2011 THROUGH MARCH 18, 2011,
WHILE IN CUSTODY OF TCSO AT TCS AND TCCC, I
WAS DENIED MEDICAL ATTENTION AND MEDICATIONS FOR MY
CLINICALLY DIAGNOSED AND DOCUMENTED MENTAL HEALTH
CONDITIONS. DUE TO TCSO AND MEDICAL STAFF'S DELIBERATE
INDIFFERENCE TO ADEQUATE CARE AND ~~CARE~~ TREATMENT
I SUFFERED GRAVE EMOTIONAL & MENTAL ANGUISH, PAIN &
SUFFERINGS AND PHYSICAL INJURY (WITHDRAWALS) FROM WELL
DOCUMENTED AND DECLARED DIAGNOSIS & DRUG THERAPIES.

* PLEASE NOTE THAT THE FOLLOWING PARTIES ARE
BEING HELD LIABLE FOR DELIBERATE INDIFFERENCE, MEDICAL
MALPRACTICE, GROSS NEGLIGENCE, CARELESS OMISSIONS,
PAIN & SUFFERING, MENTAL AND EMOTIONAL ANGUISH,
INADEQUATE MEDICAL CARE, & EXPOSING ME TO DANGEROUS
& HAZARDOUS LIVING CONDITIONS, CRUEL & UNUSUAL PUNISH-
MENT, FOR CLAIMS I through IV:

1. Greg Hamilton
2. James Sylvester

3. TCSO INTAKE SCREENING NURSE at TCS- Central Booking
4. M. SUMMERS, MEDICAL DIRECTOR.

V - EXCESSIVE USE OF FORCE - (GROUNDED BRUTALITY)
ON OR ABOUT THE 2ND DAY OF MARCH, 2011 AT OR
ABOUT 7:00 A.M. (C.S.T.) I WAS ASSAULTED BY

(4-C)

TCSO CORRECTIONAL OFFICER R. FLORES #3112 and R. Brown #4108 by EXCESSIVE USE OF UNNECESSARY FORCE BEING MEETED OUT FOR THE SOLE PURPOSE OF CAUSING INJURIES AND BODILY HARM IN A MALICIOUS AND SADISTIC MANNER AND INTENT. WHILE BEING HELD AT TCCC IN Bldg 12-D4-103, AT OR ABOUT 7:00 A.M. (C.S.T.) OFFICER FLORES #3112 PROMPTED ME TO COME OUT OF MY CELL INTO THE DAYROOM AREA BY UNLOCKING MY CELL DOOR AND UPON EXITING, OFFICER FLORES #3112 GRABBED ON TO THE FRONT OF MY SHIRT "HORSE COLLAR" AND TRIED TO SWING ME WITH ONE ARM AGAINST THE CELL DOOR. I LOST MY BALANCE DUE TO HIS INAPPROPRIATE ACTIONS AND CAME OUT OF MY JAIL ISSUED SLIPPERS AND WAS BARE FOOTED ON SLICK CONCRETE FLOORS. OFFICER FLORES THEN WRAPPED HIS LEGS AROUND MINE AND TWISTED HIS BODY TO SLAM ME DOWN UPON THE CONCRETE FLOOR. HE THEN WITH MALICIOUS AND SADISTIC INTENT WRAPPED HIS ARM AROUND MY THROAT CUTTING OFF MY AIR SUPPLY VIA A CHOKE HOLD WITH EXTREME AND ABUSIVE FORCE OF PRESSURE. OFFICER BROWN #4108 CAME IN TO ASSIST IN THE BRUTAL FORCE AND ASSISTED FLORES #3112, IN AN IMPROPER HANDCUFFING ME by twisting ONE WRIST UP AND ONE WRIST DOWN (OPPOSITE DIRECTIONS) and ~~se~~ squeezing cuffs on

AS TIGHTLY AS they would close around my WRISTS CAUSING loss of Blood flow, circulation, Numbness to HANDS AND ARMS, Shoulder, Neck and Back injuries, Front Chipped tooth, cuts, Swelling and Bruising to wrists. I was placed in A RESTRAINT CHAIR About an Hour later. I WAS DENIED Numerous Attempts for one week To Follow-up AND SEEK Medical Attention, Pictures, AND Documentation AND TREATMENTS FOR INJURIES SUSTAINED. I WAS NOT POSING A THREAT TO THE SECURITY OR SAFETY OF OTHERS AS THEY CONTEND NOR RESISTING Anything.

OFFICER DILLARD #4151 declares that TCSO has sole Custody AND CONTROL of Audio & Video OF the Incident which will support my CLAIMS AND ADD MERIT TO THIS SUIT.

* Parties Being held liable for claim # VI -

- | | |
|--------------------|--------------------|
| 1. Greg Hamilton | 3. R. Flores #3112 |
| 2. James Sylvester | 4. R. Brown #4108 |

- C. Has any court ever warned or notified you that sanctions could be imposed? X YES ___ NO
- D. If your answer is "yes", give the following information for every lawsuit in which warning was imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed warning (if federal, give the district and division): Western dist., Austin Division
2. Case Number: ?
3. Approximate date warnings were imposed: June/July 2008

Executed on: March 29, 2011
DATE

Robert J. Montez, plaintiff pro se
(Signature of plaintiff)

PLAINTIFF'S DECLARATIONS

1. I declare under penalty of perjury all facts presented in this complaint and attachments thereto are true and correct.
2. I understand if I am released or transferred, it is my responsibility to keep the Court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand that I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions in a Court of the United States while incarcerated or detained in any facility, which lawsuits were dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger of serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire \$350 filing fee and costs assessed by the Court, which shall be deducted in accordance with the law from my inmate account by my custodian until the filing fee is paid.

Signed this 29th day of March, 2011.
(Day) (month) (year)

Robert J. Montez, plaintiff
(Signature of plaintiff)

WARNING: The Plaintiff is hereby advised any false or deliberately misleading information provided in response to the following questions will result in the imposition of sanctions. The sanctions the Court may impose include, but are not limited to monetary sanctions and/or the dismissal of this action with prejudice.